

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES**

Property Tax Bureau
Informational Guideline Release (IGR) No. 91-212
October 1991

SETTING MUNICIPAL FEES & CHARGES

Section 123 of Chapter 138 of the Acts of 1991
(Adding G.L. Ch. 40, S. 22F)

SUMMARY:

A local option provision of the state budget for fiscal year 1992 permits cities and towns that accept it to set certain fees and charges and, if those fees and charges are currently established by statute, to increase them beyond the statutory level. Under this provision, municipal boards and officers may establish reasonable fees and charges for any permits, licenses or certificates they issue or for any work or services they perform, provided that all the revenue from the fees or charges is paid into the municipal treasury.

GUIDELINES:

1. The new section authorizes the imposition of reasonable fees and charges for:

- The issuance of permits, licenses or certificates.
- The performance of work or services for a person or class of persons.

The fees and charges for issuing a permit, license or certificate, or for performing work or a service, may be set by the municipal board or officer that issues the license or permit, or that performs the service. Where a service is provided by a department generally, rather than by a designated officer, the fee will be established by the department head.

If no permit or license is being issued, charges may be imposed upon a person under §22F only to the extent that work is being done or services are being provided for the benefit or at the request of that person. Where a charge, such as a collector's demand fee, is not imposed for the benefit or at the request of the person who must pay, the officer or board imposing the charge has no power under §22F to vary the fee schedule established by statute or local law.

2. Cities and towns wishing to take advantage of the new law must vote to accept the provisions of G.L. Ch. 40 §22F. The acceptance must be by a vote of the town meeting or town council, or by the vote of the city council with the mayor's approval where required by law.
3. Certain fees and charges cannot beset under the provisions of the new law. Among these are:
 - Charges for health care services approved by the Rate Setting Commission under G.L. Ch. 6A §§31-77.
 - Fees for liquor licenses under G.L. Ch. 138.
 - Fees not paid over entirely to the city or town.

These fees would include those retained by the officer that receives them (for example, certain clerk's fees) and those that are partly or wholly paid over to the commonwealth (for example, wetlands protection fees) or to another governmental body such as a county (for example, dog license fees).

- Sewer and betterment assessments under G.L. Chs. 80 and 83.

Although special assessments for water supply purposes under G.L. Ch-40 §§42G-42I are not expressly excluded from the scope of the new law, such assessments are considered taxes, rather than fees. They should therefore be imposed by bylaw, ordinance or vote in accordance with G.L. Ch. 40 §42G.

4. Existing schedules or fees and charges, whether set by statute or by local bylaw or ordinance, will remain in effect-until new fees and charges are adopted.
5. Statutory- schedules of fees and charges, such as the charges for municipal lien certificates, under G.L. Ch. 60 §23B, are presumptively reasonable. Charges higher than those set out in a statute, or charges for which there is no statutory schedule, are reasonable if they reflect the full Cost of providing the service or issuing the permit or license. Charges are unreasonable only if they regularly produce revenues substantially in excess of the full cost of providing the service or issuing the permits or licenses.

The full cost of providing certain services or issuing licenses and permits may well include more than just amounts directly appropriated for the department that does the work involved. For a discussion of various methods of determining costs, see the publication Costing municipal Services, issued by the Department of Revenue's Municipal Data Management/Technical Assistance Bureau.

6. By permitting municipal boards and officers to set fees and charges the new law avoids the necessity of regular town meeting or city council action to update schedules of charges and fees. It does not divest the city or town of the power to overrule a fee-setting decision by a board or officer, or to act to set such fees in the absence of action by a board or officer.

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

P.O. Box 9655, Boston, MA 02114-9655 (617) 626-2300
